

**Minutes of Teleconference of Public Participation Working Group  
on Sales and Use Tax Nexus  
December 3, 1997, 11:00am-12:30pm (ET)**

The following persons identified themselves as participating in this teleconference (“\*” designating industry representatives; “+” representing state representatives; no academic representatives participated in this teleconference):

Merle Buff (Co-Chair)*	Amy Hamilton*
Beau Baez+	Kendall Houghton*
Eileen Bemis+	Bob Levering*
René Blocker+	Diane Lubbering+
Peter Bloom*	William Lunka+
Karen Boucher*	Paull Mines+
Bill Brady*	Val Oveson+
Kaye Caldwell*	Bruce Reid*
Alan Friedman+	David Sanchez*
Jeff Friedman*	Marshall Stranburg+
Art Feuerstein*	June Summers Haas+
Oscar Garza*	Mike Madsen*/Cass Vickers*
Jennifer Hayes+/Larry O’Nan+	Mark Wainwright+

**I. Welcome and Introductions**

Merle Buff, Working Group Co-Chair, led the discussion during the teleconference.

**II. Public Comment Period**

Responding to an inquiry, an MTC staff member provided an update on the status of the draft Sales and Use Tax Nexus Guideline (Phase I document). Representatives of States have been polled regarding possible changes to the guideline. A revised version of the guideline reflecting State comments is expected to be completed on or about December 15. Thereafter, industry participants will review the Guideline and submit written comments setting forth any points of disagreement with the principles in the guideline. Once the States are advised of the points of disagreement, the States will offer their justification for inclusion of the principle. These comments of both industry and the States will be incorporated into the Guideline that will thereafter be presented to the full PPWG and then to the MTC Executive Committee. The entire work of the PPWG should be completed sometime in May 1998.

Additionally, an update was given on the progress of the negotiations between the DMA and a number of States. It was indicated that the parties are scheduled to meet again in the latter part of January to determine where the negotiations are. An agreement has not yet been reached and it is uncertain what the final outcome of these efforts will be.

Also, an issue was raised regarding the electronic recording of the teleconference by a member of the press. After discussion of the impact of recording on the willingness of participants to speak freely without fear of attribution, the member of the press desiring to record the proceedings voluntarily agreed not to record the teleconference. The issue of whether the public participation working group proceedings may be recorded by members of the public or the press without the consent of the participants remains to be resolved.

### III. Newly Submitted Ideas for Possible Consideration in the Development of "Phase II" Document (Ways to Make Compliance More Administrable and Provide Incentives for Compliance).

At this stage of the Phase II process, the PPWG participants have identified several topics that are to be examined for their suitability for inclusion in the Phase II document. At this stage no determination has been made that any listed topic will be included in the Phase II document—only a determination that the listed topics should be examined for determining their suitability for inclusion. In light of the earlier determination of the PPWG to consider several topics, the participants discussed whether development of the Phase II document should include consideration of the following two additional ideas that have been suggested most recently:

- a. A nexus exception for use of a prototype product/drug created and owned by an out-of-state company in clinical trials performed by an in-state company.
- b. The development of nexus guidelines for specific industries, thereby focusing on circumstances that may be peculiar to separate industries.

Several participants expressed a preference for excluding industry-specific ideas in the Phase II document. A suggestion was made that industry-specific ideas like a. above might properly be included in the laundry-list of ideas under the first "bulleted" item on the Preliminary List of Topics for Phase II distributed at the October 29, 1997, meeting in Washington, D.C. (This bullet had to do with temporary or occasional contacts with a taxing State that

would not give rise to nexus.) It was also suggested that the language of a. might be broadened so that the idea would encompass any industry, e.g., beta testing of products in the State does not establish nexus. *The teleconference participants determined that the first of the additional ideas, if it was broadened to be a general non-industry specific principle might be considered in the development the Phase II document.*

Several objections were made to the consideration of the second additional idea (b. above) in the development of the Phase II document, including the desire to avoid ideas specific to a particular industry. It was also noted that the composition of the PPWG hardly had all knowledge needed to develop industry specific guidelines. *The teleconference participants reached a consensus that the second (b. above) additional idea should be excluded from consideration for possible inclusion in the Phase II document.*

#### IV. Plans for Future Meetings

In planning the work and future meetings of the Working Group, the participants established five task forces to work on the various topics to be addressed in Phase II. The composition of the task forces, the topics assigned to each task force stated generally<sup>1</sup> that will be considered for possible inclusion in any Phase II document, and each task force's meeting schedule are attached as Exhibit "A" to these minutes. It was noted that unless there was adequate state participation in the five task forces it would be a futile gesture to proceed with the Phase II process. Without State support of the recommendations that may be eventually set forth in the Phase II document, the Phase II document would not have any reasonable prospect for implementation in the States. The formation of the task forces and the topics assigned to each will be distributed publicly and particularly to state tax administrators in an effort to encourage State representation in the Phase II process.

**It was noted as far as membership in any task force is concerned that any individual, whether a formal member of the task force or not, may fully participate in the task force teleconferences or meetings. Formal membership is only for purposes of ensuring that there is a core body of representatives of industry and states committed to the subject matter of the task force.**

The first teleconferences of the task forces are scheduled to take place on January 28 & 30, 1998, and February 3, 9 & 11, 1998. Each call will begin at 11:00am (ET) and end no later than 12:30pm. **Persons who are interested**

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<sup>1</sup>The topics are listed in broad, short-hand terms for ease of reference. Participants should take time to familiarize themselves with the specifics of the proposal.

**in specific subjects of the task forces should submit written materials that suggest how the subject might be incorporated in a possible Phase II document. Without this written material being made available to the task force at least two weeks ahead of the scheduled teleconference of the task force, there is little likelihood that the subject will gain sufficient support to be given serious consideration for possible inclusion in the Phase II document.**

**An in-person meeting of the full Working Group has been scheduled for Friday, March 27, 1998, in St. Petersburg, Florida.**

## Exhibit “A”

### Task Forces of Phase II of Sales/Use Tax Nexus PPWG

Task Force	Topics	Members	Teleconf. Date*
<b>One</b>	a. Temporary/Occasional Contacts b. Nexus Duration	Bemis Brady* Feuerstein Garza Hesselholt (FL) Rosen Levering Lubbering (MO) Lunka (MN) Stranburg (FL) Wainwright (UT)	1/28/98
<b>Two</b>	a. Affiliate Nexus b. Indirect Property Interests	Bloom Boucher Brady Buff Caldwell J. Friedman Grossman Levering Lubbering (MO) Lunka (MN) Rosen Wainwright (UT)*	1/30/98
<b>Three</b>	a. Economic Presence Nexus b. Nexus from Intangibles	Bloom Boucher* Buff Hesselholt (WA) Levering Reid	2/3/98
<b>Four</b>	a. Advance Ruling Procedure b. Use Tax Collection, including access to customer list in lieu of use tax collection	Bloom Brady Buff Caldwell DuFour (ME) Grossman O’Nan (KY)* Stranburg (FL) Vickers Wainwright (UT)	2/9/98
<b>Five</b>	a. Common/Contract Carrier b. Mobile Property c. When a Sale is in a State	Bloom Boucher Caldwell* Garza Hesselholt (WA) Lunka (MN) Madsen O’Nan (KY)	2/11/98

\* indicates the arbitrarily designated facilitator of the teleconference discussion. All teleconferences begin at 11:00am, Eastern Time. Participants on their own must call (703) 736-7307 to participate.

*N.B.*, MTC staff indicated it will participate in all teleconferences.